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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,746	01/15/2004	Matthias Konrad	03/005 MFE	4292

38263 7590 10/07/2005

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CHARLOTTE, NC 28211-2841

EXAMINER
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TRAN, THAO T

ART UNIT	PAPER NUMBER
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1711

DATE MAILED: 10/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/757,746

Applicant(s)

KONRAD ET AL.

Examiner

Thao T. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 21 July 2005 and 30 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 13-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 13-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This is in response to the Amendments and Affidavits filed on 7/21/2005. The IDS and terminal disclaimer filed on 6/30/2005 are also acknowledged.
2. Claims 1-11 and 13-20 are currently pending in this application. Claims 19-20 have been newly added.

### ***Double Patenting***

3. In view of the prior Office action of 3/22/2005, the provisional double patenting rejections of claims 1-18 over claims 1-16 of copending Application No. 10/757,837, of claims 1-2, 5-9, 12, 14, 17-18 over claims 1-8, 11-14, and 17-18 of copending Application No. 10/760,987, or of claims 1-8, 12-15, and 18-19 of copending Application No. 10/760,986, have been withdrawn due to the Terminal Disclaimer timely filed on 6/30/2005.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-11, 13-18, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Kobayashi et al. (US Pat. 4,957,980).

Kobayashi teaches a multilayered polyester film for packaging and a method of making, the polyester film comprises a polyester resin composition having 100 parts by weight of a

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thermoplastic polyester resin and 1-100 parts by weight of a polyamide resin, or specifically 90 parts of the polyester resin and 5 parts of the polyamide resin (see abstract; col. 1, l. 29-35; Table 1, Example 1), and additives such as antioxidants or UV absorbing agents or antistatic agents (stabilizers) (see 4, ln. 10-14). Kobayashi further teaches the polyester resin is composed of repeating units of terephthalate, isophthalate, or naphthalene, and ethylene glycol (see col. 2, ln. 28-45). The polyamide resin is composed of m-xylyleneadipamide (see col. 2, ln. 53-62).

Kobayashi further discloses the multilayered polyester film being formed by extrusion and biaxial orientation (see col. 4, ln. 49-52). The film has an oxygen permeation of 35cc/m<sup>2</sup>.d.atm (.35cc/bottle (1000cc).d.atm) and an opacity of 6% (haze) (see col. 5, ln. 17-21; Table 1, Example 1).

Although the reference does not specifically teach the gloss and roughness of the overlayer, since the reference teaches the same chemical components of the multilayer, the overlayer would inherently have the same gloss and roughness.

Since claim 16 recites a filler of 0% concentration, the filler is not required.

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kobayashi as applied to claim 1 above.

Kobayashi is as set forth in claim 1 above and incorporated herein.

Kobayashi further teaches that at least one of the layers is made of the polyester resin containing a polyamide resin having m-xylene groups (see abstract). Kobayashi further discloses in the background section of the invention that a thermoplastic polyester resin not including polyamide containing m-xylene has been widely used in the art.

Therefore, it would have been obvious to one of ordinary skill in the art that at least one of the layers of the molded article would have been of a polyester resin without the addition of a polyamide containing m-xylene, since this resin has been a conventional resin commonly used in the art in the production of molded articles in packaging that provides excellent mechanical properties, transparency, chemical resistance, and excellent processing properties (see col. 1, ln. 18-28).

### ***Response to Arguments***

8. Applicant's arguments filed on 7/21/2005 have been fully considered but they are not persuasive.

Applicants, on page 7 of the Remarks, argue that the '980 patent differs from the presently claimed invention in that the reference does not teach an overlayer with a gloss greater than 100. The reason is, the Applicants further argue, the overlayer of the '980 contains poly(m-xyleneadipamide) which makes it suffer from high roughness values, thus lower glass appearance. However, this argument contradicts the recitation in claim 3 of the present invention, which also depends on claim 1. In claim 3, it is stated that the overlayer (A) also contains poly(m-xyleneadipamide). Thus, the layers taught by the '980 patent would inherently have the

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same properties, including gloss level, since the layers are the same as those in the presently claimed invention. Therefore, the '980 patent would anticipate the presently claimed invention.

### ***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

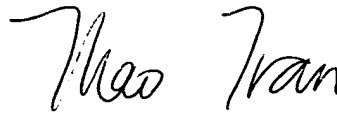
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thao T. Tran whose telephone number is 571-272-1080. The examiner can normally be reached on Monday-Friday, from 9:00 a.m. - 5:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

tt  
October 3, 2005



**THAO T. TRAN**  
**PATENT EXAMINER**